

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ALEDOL, LLC,	:	APPEAL NO. C-090055
		TRIAL NO. A-0711773
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
THE A. B. MIREE FUNDAMENTAL	:	
ACADEMY, INC.,	:	
Defendant-Appellant/Third-	:	
Party Plaintiff,	:	
vs.	:	
ALFRED OLVERSON and PAULINE	:	
OLVERSON,	:	
Third-Party Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant/third-party plaintiff, The A. B. Miree Fundamental Academy Inc. (“the academy”), a community school, appeals the trial court’s entry overruling its objections to a magistrate’s decision granting the motion of plaintiff-appellee, Aledol, LLC, for prejudgment attachment under R.C. Chapter 2715.

In 2000, the academy rented a 30,000-square-foot building for its school from Aledol. The lease and its extensions expired, and after June 2007, the academy remained

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

as a month-to-month tenant. The academy also stopped paying rent to Aledol. And Aledol began this action for forcible entry and detainer and for money damages. The case was referred to a magistrate.

By April 2008, the academy owed Aledol \$282,429.78 in back rent. And Aledol moved for prejudgment attachment of the academy's assets to protect its recovery on its back-rent claim. Aledol supported its motion, in part, with the affidavit of Alfred Olverson, a 50-percent owner of Aledol and a founder of the academy. Olverson provided information about the academy's income derived from state education funds, the existence of its bank accounts, its outstanding debts, and its finances, including the amount of back rent due to Aledol.

The academy received notice of the attachment proceedings as required by statute. The magistrate then conducted an evidentiary hearing and journalized a decision granting Aledol's motion for prejudgment attachment of the academy's personal property, bank accounts, and other assets.

The academy filed objections, arguing, in essence, that Aledol had failed to identify the academy's assets with sufficient specificity. We note that the academy had failed to comply with Aledol's discovery requests, which included identification of the academy's assets. On the same day that the magistrate granted Aledol's prejudgment-attachment motion, it also granted Aledol's motion to compel discovery. The record and the statements of appellate counsel do not reflect compliance with that order.

The trial court heard the academy's objections, including new allegations of a conflict of interest and ethical violations, matters not raised before the magistrate, without receiving new evidence. It overruled the objections and adopted the magistrate's decisions, including its order to compel discovery. The academy did not file a motion to

discharge the attachment² or a motion for findings of facts and conclusions of law. Rather, it appealed the trial court's ruling on its objections.

In its first assignment of error, the academy contends that the trial court erred in overruling its objections to the magistrate's decision granting Aledol's motion for prejudgment attachment.

"[P]rejudgment * * * attachment involves the seizure of a defendant's property so that if the plaintiff ultimately prevails on his claim, he will be assured of recovering on the judgment through sale of the seized property."³ Under the procedures provided in R.C. Chapter 2715, the magistrate and the trial court were first required to determine whether Aledol's affidavit and other evidentiary material supported at least one of the grounds for attachment listed in R.C. 2715.01(A). Those grounds include whether the defendant has absconded with the intent to defraud creditors; is about to remove property with the intent to defraud creditors; is about to convert property for the purpose of placing it beyond the reach of creditors; has removed or disposed of property with the intent to defraud creditors; or, has fraudulently or criminally contracted the debt.⁴ The court and magistrate also had to determine whether there was probable cause to support the motion.⁵ "Probable cause" means that it is likely that the party seeking attachment "will obtain [a money] judgment against the defendant" that can be satisfied from the property to be seized.⁶

Because the trial court's ruling on the academy's objections involved both factual and legal determinations, on appeal we review the court's ruling under an abuse-of-

² See R.C. 2715.44.

³ See R.C. 2715.01(A); see, also, *Star Leasing Co. v. G & S Metal Consultants, Inc.*, 10th Dist. No. 08AP-713, 2009-Ohio-1269, ¶39.

⁴ See R.C. 2715.01(A).

⁵ See R.C. 2715.043(B); see, also, *Honess v. Ghali* (Aug. 7, 1997), 8th Dist. No. 71518.

⁶ R.C. 2715.011(A).

discretion standard.⁷ To have abused its discretion, the trial court must have acted unreasonably, arbitrarily, or unconscionably.⁸

Here, Aledol presented evidence that the academy had admitted that it had stopped paying rent, that it had received state funds that could have been used to pay rent but that it chose to use to satisfy other debts instead, that it had removed personal property from the building to an undisclosed location, and that it had refused to respond to Aledol's discovery requests for the identity, location, and value of its bank accounts and other assets despite orders from the magistrate to disclose that information. Because the trial court's adoption of the magistrate's decision exhibited a sound reasoning process under R.C. 2715.01(A) and 2715.043(B), this court will not disturb that determination.⁹ The first assignment of error is overruled.

The academy next argues that trial court erred in failing to allow the academy "the time provided" by Civ.R. 52 and the local rules "for requesting findings of fact and conclusions of law," when the court entered judgment on the same day that it "made its pronouncement." This argument must fail.

First, Civ.R. 52 provides that a party may request findings of fact and conclusions of law "before the entry of judgment * * * or not later than seven days after [it] has been given notice of the court's announcement of its decision, whichever is later, * * *." But the record certified for our review reflects that the academy failed to request findings of fact within the period prescribed by the rules, or, indeed, at any time after that period.

Instead, on the seventh day after the trial court's entry of its order adopting the magistrate's decisions, the academy filed a notice of appeal to this court. "Once a case has

⁷ See *In re Estate of Knowlton*, 1st Dist. No. C-050728, 2006-Ohio-4905, ¶43; see, also, *Shah v. Smith*, 181 Ohio App.3d 264, 2009-Ohio-743, 908 N.E.2d 983, ¶17.

⁸ See *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 97, 482 N.E.2d 1248.

⁹ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

been appealed, the trial court loses jurisdiction except to take action in aid of the appeal.”¹⁰ Thus, once the academy had decided to appeal rather than to request findings of fact and conclusions of law, the trial court was without jurisdiction to grant any subsequent request under Civ.R. 52. Since the academy failed to make a timely request for findings of fact and conclusions of law before filing its notice of appeal, we hold that it has waived any error in this regard.¹¹ The second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R.27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 10, 2010
per order of the Court _____.
Presiding Judge

¹⁰ *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶9.

¹¹ See *In re G.N.*, 170 Ohio App. 3d 76, 2007-Ohio-126, 866 N.E.2d 32; see, also, *Lyons v. Link*, 5th Dist. No. 05 CA 23, 2005-Ohio-7039, ¶13.